

**REMARKS**

In the Advisory Action dated January 18, 2005, the Examiner has maintained the final rejection dated October 1, 2004, of pending claims 28-40 and the allowance of claims 26 and 27. By the present amendment, claims 28 and 34 have been amended. Accordingly, claims 26-40 remain in the present application. Applicant respectfully requests reconsideration and allowance of outstanding claims 28-40.

**A. Allowable Subject Matter**

The Examiner has allowed claims 26 and 27. Applicant appreciates the Examiner's statement of allowance regarding claims 26 and 27.

**B. Claim Rejections – 35 U.S.C. § 103**

Claims 28 – 40 have been rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Irvin '317 in view of Todd '672. Applicant respectfully disagrees; however, to expedite the prosecution of the present application, applicant has amended independent claims 28 and 34, and respectfully submits that amended claims 28-40 are patentably distinguishable over the cited references of record, considered singly or in combination.

With regard to claim 28, Applicant has amended the claim to specify that the transmitter transmits a signal at a frequency f1, and that the receiver receives a signal at a frequency f2, and that the controller is connected to the transmitter to set the frequency f1, and is connected to the receiver to set the frequency f2, based on the bit

error rate. Support for this amendment is found in the Specification on page 8, lines 8 – 19, and in Figure 1.

Applicant respectfully submits that the amendment to include the limitation that the controller be capable of setting the transmit frequency and receive frequency based on the bit error rate of the received signal distinguishes the claimed invention from the references of record in the application. Specifically, none of the cited references teach or suggest the selection of the transmit or receive frequencies based upon the bit error rate. Accordingly, Applicant asserts that claim 28, as amended, is allowable. Because claims 29, 30, 31, 32, and 33 depend either directly or indirectly from now allowable claim 28, Applicant asserts that they are likewise allowable for at least the same reasons discussed above with regard to claim 28.

With regard to claim 34, Applicant has amended claim 34 to include a means for setting the first frequency and the second frequency based on the bit error rate. Support for this amendment is also found in the Specification on page 8, lines 8 – 19, and in Figure 1.

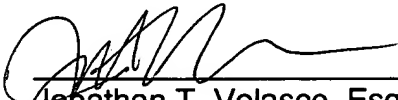
For the same reasons set forth above, Applicant asserts that claim 34, as amended, is allowable. Because claims 35, 36, 37, 38, 39, and 40 depend either directly or indirectly from now allowable claim 34, Applicant asserts that they are likewise allowable.

**C. Conclusion**

For all the foregoing reasons a notice of allowance directed to claims 26-40 pending in the present application are respectfully requested.

Respectfully Submitted,

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